

# OFFICE OF THE ATTORNEY GENERAL

85-00463



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Honorable Seth Hammett  
State Representative  
Alabama House of Representatives  
District No. 92  
P. O. Box 1607  
Andalusia, AL 36420

Municipalities - Utilities -  
Utility Boards

Code of Alabama 1975, § 11-81-161  
does not give exclusive right to  
a municipality to provide utility  
services in rural communities.

Dear Representative Hammett:

Your opinion request has been received in the Office of  
the Attorney General. Your first question is:

Does Section 11-81-161, Code of Alabama 1975, give  
exclusive rights to a municipality to run gas lines  
in rural communities without the intervention of  
other utility companies running new gas lines at a  
reduced rate in said rural communities presently  
served by the existing municipal gas line systems?

Code of Alabama 1975, § 11-81-161(a) states:

Any county or incorporated municipality in  
the state of Alabama is authorized to  
acquire by any lawful means any one or more  
of the following systems: a waterworks  
system, a sanitary sewer system, a gas  
system and an electric system and, in  
furtherance of the acquisition of any such  
system, to acquire any necessary part  
thereof within or without or partially

within and partially without the limits of any such county or the corporate limits of any such municipality, as the case may be; provided, that no municipality in this state shall have, under the authority conferred by this article, the right to construct a gas system, a domestic water distribution system or electric system or portion thereof if there is at the time of such proposed construction a gas system, domestic water distribution system or electric system, respectively, or any portion thereof, then operated as a public utility within the corporate limits of such municipality by any private or public utility corporation, individual, partnership or association; provided further, that no county in this state shall have under the authority conferred by this article the right to construct a gas system, domestic water distribution system, electric system or portion thereof in that portion of said county where there may then be located any gas system, portion thereof, then being operated as a public utility by any private or public utility corporation, individual, partnership or association.

While this statute prohibits a municipality from constructing a gas system if there is at the time of such proposed construction a gas system operated as a public utility within the corporate limits of such municipality by any private or public utility corporation, individual, partnership or association, this statute does not prohibit construction outside the corporate limits in an area already being served nor does the prohibition extend to the benefit of a previously existing municipal system so as to prohibit other entities from also furnishing services. Therefore, the answer to your first question is no.

Your second question reads as follows:

If the answer to the preceding question is no, would an act of the legislature giving the municipality exclusive rights to run gas lines in rural communities contravene the federal or state constitution?

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While we always wish to be of service, this office maintains a general policy of refraining from addressing constitutional issues which could be raised by the passage of legislative acts.

I do hope that this response sufficiently answers your inquiry. If, however, we may be of further service, please do not hesitate to contact us.

Sincerely yours,

CHARLES A. GRADDICK  
Attorney General

By:

A handwritten signature in cursive script, reading "Carol Jean Smith".

CAROL JEAN SMITH  
Assistant Attorney General

CAG/CJS/pd